

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

ANNA GILBERT,

Plaintiff,

- against -

CAVENDER CADILLAC COMPANY,

Defendant.

Docket No. 5:18-cv-1073

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Anna Gilbert (“Gilbert” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant Cavender Cadillac Company (“Cavender Cadillac” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of the historic Dienger Trading Co. building, owned and registered by Gilbert, a professional photographer. Accordingly, Gilbert seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and This Court has subject matter jurisdiction over This action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in Texas.

4. Venue is proper in This District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Gilbert is a professional photographer having a usual place of business at 1109 South Main Street, Suite 203, Boerne, Texas 78006.

6. Upon information and belief, Cavender Cadillac is a foreign business corporation duly organized and existing under the laws of the State of Texas, with a place of business at 30700 IH 10 W Boerne, Texas 78006. Upon information and belief Cavender Cadillac is registered with the Texas Department of State Division of Corporations to do business in the State of Texas. At all times material, hereto, Cavender Cadillac has owned and operated a website at the URL: www.cavenderchevrolet.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. Gilbert photographed the historic Dienger Trading Co. building (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Gilbert is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright hereto.

9. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-104-536 and titled “9.24.15_The DeingerTrading Co.3.jpg.” See Exhibit B.

B. Defendant's Infringing Activities

10. Cavender Cadillac ran numerous advertisements on the Website. See URL https://www.cavenderchevrolet.com/?cs:e=g&cs:gn=s&cs:cid=261565417137&cs:kw=cavender%20chevrolet%20boerne&cs:p=&cs:tv=3061&cs:a=df_chevy_brand_search&cs:pro=chvdlrfcsd

ap&cs:ki=1424384581&gclid=CjwKCAjwrqnYBRB-EiwAtnBFsY6SbFXgskvYIU-c4YaCbAmFfkQfSLXTc4vfq11gSYWnUcaRBBUMxoCzTUQAvD_BwE. The advertisements prominently featured the Photograph. The advertisements are shown in Exhibit C hereto.

11. Cavender Cadillac did not license the Photograph from Plaintiff for its advertisements, nor did Cavender Cadillac have Plaintiff's permission or consent to publish the Photograph on its Website.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Cavender Cadillac infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website and Advertisements. Cavender Cadillac is not, and has never been, licensed or authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST
DEFENDANT
(17 U.S.C. § 1202)

17. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-16 above.

18. Upon information and belief, intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph.

19. The conduct of Cavender Cadillac violates 17 U.S.C. § 1202(b).

20. Upon information and belief, Cavender Cadillac's falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

21. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Cavender Cadillac intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph. Cavender Cadillac also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph.

22. As a result of the wrongful conduct of Cavender Cadillac as alleged herein, Plaintiff is entitled to recover from Cavender Cadillac the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by Cavender Cadillac because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

23. Alternatively, Plaintiff may elect to recover from Cavender Cadillac statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Cavender Cadillac be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant Cavender Cadillac be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
 - a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);
5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
6. That Plaintiff be awarded her costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203(b);
7. That Plaintiff be awarded punitive damages for copyright infringement;
8. The Plaintiff be award attorney's fees and costs.
9. That Plaintiff be awarded pre-judgment interest; and

10. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York

October 12, 2018

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